Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/07062/2021
(UI-2021-001442)

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On : 4 April 2022	**On : 31 May 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

RIDVAN BEQIRI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr O Sobowale, Counsel
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Albania, born on 26 July 1990. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for leave to remain under the EU Settlement Scheme (EUSS) as the spouse of an EEA national.

2. The appellant entered the UK and claimed asylum on or around 10 September 2019. On 15 December 2020 he applied for leave to remain in the UK under the EUSS as the spouse of Stefka Rangelova, a Bulgarian national. The respondent refused the appellant's application on 15 April 2021 on the

basis that he had failed to provide sufficient evidence to confirm that he met the eligibility requirements under the EUSS, since the evidence he had submitted was not sufficient to confirm that he was the spouse of a relevant EEA citizen. The Bulgarian ID card he had provided as proof of the EEA citizen's identity and nationality was not considered to be valid as it had been reported lost/stolen on 3 July 2020; the marriage certificate he had provided was a photocopy rather than an original and was therefore also considered to be invalid; the utility bills and other documents submitted as evidence of residence in the UK were dated prior to the requested period of July 2020 to 31 December 2020 and were therefore also unacceptable; and the respondent had, in addition, been unable to find any evidence of Stefka Rangelova currently residing in the UK. The evidence did not, therefore, confirm that the appellant was the family member of an EEA national and the respondent considered that the appellant did not meet the requirements for pre-settled status as set out in EU14 of Appendix EU of the Immigration Rules.

3. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Alis on 22 November 2021. Mr Greer appeared on behalf of the appellant at that hearing. He advised the Tribunal that he was not calling the appellant to give evidence and he confirmed that he was arguing, in the alternative, that the appellant should succeed under Article 10 of the Directive and Regulation 8(2) of the 2016 Regulations. The appellant's evidence, in his witness statement before the Tribunal, was that he had met his wife in Bulgaria in July 2018 and they had married on 22 November 2018. He came to the UK in 2019 and his wife came as an EEA national in November 2019 and they lived together as a couple. In June 2020 he made an application for a residence card as his wife's family member and his wife produced her ID card as part of that application. However the application was withdrawn and in December 2020 he made an application through the EUSS, but his wife's passport and ID card were omitted from that application. He had since provided evidence of them living together and the original marriage certificate. When he returned from a visit to his cousin, on 28 March 2021, he found that his wife had left and had taken all her possessions with her and he discovered also that she had not been into work since 26 March 2021.

4. The respondent's case before the judge was that the appellant had to provide a valid passport or ID for his wife which he was unable to do, as the card had been reported stolen or lost in July 2020 and was therefore no longer valid; the appellant's evidence about his relationship was inconsistent; the appellant's application under the 2020 Regulations therefore failed, the appellant did not meet the requirements of Appendix EU and his appeal accordingly failed. On behalf of the appellant, Mr Greer argued that at the date of the application the appellant had demonstrated that he satisfied Appendix EU14(1) of the immigration rules, as he had shown that he was married and at that time his wife was in the UK and had produced a valid ID card; and that the respondent had failed to discharge the burden of proving that the ID card was not valid. Alternatively the appellant succeeded under Article 10 of the Directive and regulation 42 of the EEA Regulations with reference to the

Withdrawal Agreement and the case of Rehman (EEA Regulations 2016 - specified evidence) [2019] UKUT 195.

5. The judge found that there was no dispute that the appellant and his wife were married. The only issue was the validity of his wife's ID card and the respondent had discharged the burden of proving that it was not valid. Since the respondent had not agreed to accept an alternative document as proof of the appellant's wife's identity and nationality, the appeal under the EUSS Regulations failed. As for Mr Greer's alternative argument, relying on Article 10 of the 2004/38/EC Directive and Regulation 42 of the EEA Regulations 2016 and the case of Rehman, namely that the ID card had been previously produced to the respondent with the application made in June 2020, the judge noted that that application had been withdrawn by the appellant before it was considered by the respondent and no residence card or permit was issued. Accordingly the ID card was not a valid one and the requirements of the Regulations were not met. The judge dismissed the appeal.

6. The appellant sought permission to appeal to the Upper Tribunal. It was asserted in the grounds, prepared by Mr Greer, that the judge made perverse or irrational findings on the existence of a valid identity card when the evidence before him did not prove that the document was invalid, and had made perverse or irrational findings on the appellant's entitlement to succeed under the Withdrawal Agreement, when he was entitled to the benefit of the evidential flexibility provisions of regulation 42 of the EEA Regulations 2016.

7. Permission was granted by the First-tier Tribunal on 21 January 2022 and the respondent produced a rule 24 response.

8. The matter came before me at a hearing, at which the appellant was represented by Mr Sobowale. Both parties made submissions.

9. Mr Sobowale relied on Mr Greer's grounds. He submitted that the validity of a document had to be determined by country specific law and the respondent had not shown, by such means, that the ID card was invalid. It was wrong for the respondent to assert, as she did in her rule 24 response, that the she did not have to prove her case, when she did.

10. Mr Bates submitted that that was not what was said in the rule 24 response: what was said was that the respondent bore the burden only on the balance of probabilities and not to the criminal law standard of proof. He submitted that the background to the case was important: the appellant had been invited to a marriage interview following an application made in June 2020 but had withdrawn his application prior to the interview date and had then made an application under the EUSS in December 2020. In that latter application he had not produced any original documents and was relying on a copy of an ID card which had been reported lost or stolen. The respondent's position was that the ID card was not valid and the judge was entitled to conclude, on a balance of probabilities, that the appellant had not made his case of submitting valid documents in support of his application. The

respondent had not been able to interview the appellant about the marriage application because the appellant's wife had disappeared by then and the appellant did not give any evidence before the judge to provide an explanation. Whilst it was claimed that the original ID card had been produced to the Secretary of State with the previous application, no decision had been made on that application as it had been withdrawn. There had therefore not been any previous acceptance of the EEA national's identity. There was no explanation why the EEA national had not sought to apply for a new ID card after it was reported lost or stolen in July 2020. The judge was entitled to conclude that the document was not reliable evidence of the EEA national's identity.

11. Mr Sobowale reiterated the points previously made in response.

Discussion

12. . As is agreed by the parties, the only issue before the judge was the validity of the EEA national's ID card. The appellant had not disputed the fact that the card had been reported stolen or lost. Neither had he disputed the fact that he had produced only a photocopy of the card with his application under the EUSS and that he did not have the original document. His assertion was that the respondent had not discharged the burden of proving that the ID card was not valid just because it had been stolen or lost, and that the photocopy produced with the application was sufficient evidence of a valid ID card proving the EEA national's identity. It was asserted that the fact of the ID card being lost or stolen did not affect its validity and that the validity or otherwise of an ID card issued by the Bulgarian authorities could only be determined by evidence of Bulgarian law which had not been adduced. The appellant claimed that the judge was therefore in error in finding that the respondent had proved her case. However, I am in agreement with the submission in the rule 24 response, that there was no requirement for expert evidence to be adduced in this case in order for the respondent to be able to meet the burden of proof on the balance of probabilities, given that it was an obvious point, sufficient to meet that burden, that an ID card could no longer be utilised for its specific purpose once it had been reported as stolen or lost and was therefore properly considered to be invalid. The judge was therefore perfectly entitled to conclude that the appellant had not produced a valid ID card to establish his wife's identity and nationality.

13. The alternative argument made for the appellant relied upon regulation 42 whereby "*the Secretary of State may accept alternative evidence of identity and nationality where the person is unable to obtain or produce the required document due to circumstances beyond the person's control*." The assertion was that the loss or theft of the ID card amounted to circumstances beyond the appellant's control and that the respondent was able to accept an alternative form of identification. It was argued that, as an acceptable alternative, the respondent should have considered the fact that the original ID card had been produced previously and that that was sufficient as proof of the EEA national's identity, in accordance

with the guidance in Rehman. However, as Mr Bates properly submitted, and as stated in the rule 24 response, the point which was being made in Rehman was that the respondent had already accepted that the appellant was married to an EEA national when a previous residence card was issued to him, whereas in this appellant's case the respondent had never made a decision on the previous application as it was withdrawn prior to the marriage interview. There had therefore been no prior acceptance by the respondent that the appellant had any right of residence under the EEA Regulations in force prior to the UK's withdrawal from the EU for the purposes of the Withdrawal Agreement. That was the point made by the judge at [59] and on that basis he was fully entitled to reject that argument.

14. It was also, as the rule 24 points out, a relevant consideration that the appellant had not been tendered for cross-examination in order to seek to satisfy the Tribunal through his oral evidence of the identity of his EEA national spouse and the judge was therefore prevented from utilising alternative other means of establishing identity. Indeed the uncertainties with the evidence, as described by the judge, were such that he was fully and properly entitled to conclude that there was no reliable evidence to establish the EEA national's identity. The judge was accordingly perfectly entitled to conclude that no valid ID card had been produced, nor reliable alternative evidence of identity, so as to meet the requirements of the EEA Regulations 2016 and thus the terms of the Withdrawal Agreement, or to meet the requirements of Appendix EU to the Immigration Rules. The judge's decision to dismiss the appellant's appeal, and the reasons for so doing, were therefore fully and properly open to him on the evidence before him.

DECISION

15. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 4 April 2022